

Division of Securities
Utah Department of Commerce
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSE
OF:**

**OMNI ADVISOR GROUP;
BRIAN P. MCGUANE;
KEVIN E. SULLIVAN;
NORA FILECCIA;
ANITA BROWN;
BRENT BURKE;
ROBBIE D. PRICE; AND
GUS THOMAS;**

Respondents.

**AMENDED EMERGENCY ORDER TO
CEASE AND DESIST AND ORDER TO
SHOW CAUSE**

**Docket No. SD-02-0111
Docket No. SD-02-0112
Docket No. SD-02-0113
Docket No. SD-02-0115
Docket No. SD-02-0116
Docket No. SD-02-0154
Docket No. SD-02-0155
Docket No. SD-02-0156**

Upon authority of §61-1-20 of the Utah Uniform Securities Act ("Act"), the Utah Division of Securities issues this Amended Emergency Order to Cease and Desist and Order to Show Cause ("Order") against Omni Advisor Group, Brian P. McGuane, Kevin E. Sullivan, Martin M. Brennan Jr., Nora Fileccia, Anita Brown, Brent Burke, Robbie Price and Gus Thomas, (collectively "Respondents"). The Order is being amended to add Brent Burke, Robbie

Price and Gus Thomas to the existing emergency order. The actions against Martin Brennan and Lance Carlyle have been dismissed in separate actions.

In connection with this Order, the Director finds and concludes that Respondents' conduct presents an immediate and significant danger to the public welfare, and the threat requires immediate action by the Division. The Director issues this Emergency Order in accordance with the provisions of § 63-46b-20 of the Utah Administrative Procedures Act, ("UAPA").

FINDINGS

1. Omni Advisor Group, Inc. ("Omni") is a North Carolina corporation formed on March 21, 2002. Omni maintains its principal place of business in Huntersville, North Carolina.
2. Brian P. McGuane ("McGuane") is an individual listed on corporate records as the a director and president of Omni.
3. Kevin E. Sullivan ("Sullivan") is an individual listed on corporate records as a director of Omni.
4. Martin M. Brennan, Jr. ("Brennan") is an individual listed on corporate records as the incorporator of Omni.
5. Nora Fileccia ("Fileccia") is an individual who is acting as an agent of Omni by offering and selling Omni securities.

6. Anita Brown (“Brown”) is an individual who is acting as an agent of Omni by offering and selling Omni securities.
7. Brent Burke (“Burke”) is an individual who is acting as an agent of Omni by offering and selling Omni securities.
8. Robbie Price (“Price”) is an individual who is acting as an agent of Omni by offering and selling Omni securities.
9. Gus Thomas (“Thomas”) is an individual who is acting as an agent of Omni by offering and selling Omni securities.
10. On May 10, 2002, a Utah resident heard a radio advertisement for an investment with a 12 to 14 percent return. The advertisement gave a telephone number of 888-397-1234.
11. On May 10, 2002, Division investigator, Jude Archuleta (“Archuleta”), using the name of “Kim Jenkins,” telephoned the number. The call was answered as “Omni Advisor Group.” When she asked about the investment, Archuleta was transferred to Fileccia.
12. During the conversation, Fileccia represented the following:
 - a. Omni was located in Charlotte, North Carolina;
 - b. The minimum investment was \$10,000 and qualified for IRA or 401K money;
 - c. The investment was in “senior settlements” or life insurance policies purchased from seniors;
 - d. When the insured individual dies, the investor doubles his or her money;

- e. The policies are from \$ 1 to 4 million policies;
 - f. Investment is, on average, four to five years;
 - g. Investment is secured and back through life insurance companies such as Met Life, Prudential, Equitable and Hartford National.
 - h. Omni has been around for ten years and the industry has been around for 15 years.
13. On May 23, 2002, the Division received offering material from Omni addressed to Kim Jenkins. The offering material consisted of a letter from Fileccia, Fileccia's business card, a document entitled "Investment Research Information," a color brochure about Omni and a three-page purchase agreement.
14. On May 28, 2002, Archuleta called Omni at 1-866-949-7475 and again spoke with Fileccia.
15. During this conversation, Fileccia explained the program further providing the following information:
- a. A confirmation that the minimum investment was \$10,000;
 - b. Confirmation that the investor would invest in up to five policies;
 - c. "We don't purchase any small policies;"
 - d. Average policy owner is 82 to 83 years old;
 - e. Omni retains 20 percent ownership of the policy;
 - f. Omni is actually the owner of the policies;

- g. Policies are held by an escrow agent;
- h. SI 100 is a company that was set up to hold the policies;
- i. Mills Potoczak and Company (“Mills Potoczak”) is the escrow agent;
- j. Investor receives the name of the life insurance company, the policy number, the face amount of the policy and the recorded beneficiary designation;
- k. SI 100 is the named beneficiary;
- l. Omni keeps its distance from the transaction to protect the investor;
- m. All premiums were paid in full on the policies being held;
- n. Omni has interest bearing escrow accounts to pay nine to 12 years worth of premiums;
- o. Since Omni retains 20 percent ownership of the policies, Omni will not let the policies expire;
- p. If Omni disappeared tomorrow, it would not affect the investor’s designation;
- q. Omni retains an outside company called Lifewatch (the same company the Internal Revenue Service uses) to track when individuals pass away;
- r. Mills Potoczak then contacts all investors and pays the profits directly to the investor;
- s. All investor money goes toward the investment;
- t. Fileccia works for Omni and is paid on commission.

16. A search of the Division records and records of the Central Registration Depository (“CRD”) revealed that Fileccia is not licensed to sell securities in Utah.
17. The brochure received by the Division states: “The Omni Advisor Group can help provide you with a comprehensive plan to maximize your long-term financial goals and provide above average returns while managing the risk. . . . Any risk of fraud by misappropriation of funds has been eliminated by using Mills, Potoczak & Company, an insured, bonded Escrow Agent, to handle all purchaser money.”
18. The Division’s investigation into the matter revealed that, in or about February, 2002, the Maryland Division of Securities asked Omni to voluntarily cease and desist from selling securities in Maryland. Omni agreed, but has since mailed offering documents to a Maryland resident. In July 2002, the Maryland Securities Division issued an Order to Show Cause against Omni alleging violations of the Maryland Securities Act. That Action is currently pending.
19. In or about July, 2002, George Robison (“Robison”), Director of Licensing for the Division, contacted Omni and was transferred to Brown. During the conversation, Brown stated:
 - a. The minimum investment is \$10,000;
 - b. The investment qualifies for 401K or IRA money;
 - c. Warren Buffet moved his money into the industry;

- d. Investor becomes a beneficiary on 4 or 5 policies;
 - e. Policies are often “key-man” coverage that the insured wants to sell instead of cashing out.
20. A search of the Division records and records of the Central Registration Depository (“CRD”) revealed that Brown is not licensed to sell securities in Utah.
21. Subsequent to issuance of the Emergency Order to Cease and Desist and Order to Show cause, the Division learned that Burke, Price and Thomas were also involved in selling the securities of Omni in Utah. The Division also learned that Carlyle did not make any sales in Utah and is therefore being dismissed from this action.
22. The investment offered by Omni is a security under §61-1-13(24)(a)(xi).

CAUSES OF ACTION

Count I **(Securities Fraud under §61-1-1 of the Act)**

23. Section 61-1-1 of the Act states:

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to:
1) employ any device, scheme, or artifice to defraud;
2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

24. Respondents violated §61-1-1 of the Act by making the following misrepresentations:
- a. Omni had been in business for 10 years when in fact, North Carolina corporation records show that Omni was formed in March, 2002.
 - b. Omni used a company called Lifewatch to track the deaths of the insured, and this was the same company the IRS uses. In fact, the IRS does not use an outside company called Lifewatch.
 - c. The brochure indicates that any risk of fraud has been eliminated by the use of an escrow agent, when in fact, the risk of fraud has not been eliminated, and any investment of this type has a degree of risk.
25. Respondents omitted the following material facts which made prior statements about the investment misleading in violation of §61-1-1 of the Act:
- a. The identity of the officers or directors and their related experience;
 - b. The operating and business history;
 - c. Performance to previous investors;
 - d. A complete description of the program;
 - e. Information on the payment of premiums;
 - f. The true degree of risk; and
 - g. Prior actions taken by states.

Count II
(Acting as Unlicensed Agents under §61-1-3 of the Act)

26. Section 61-1-3 (1) of the Act provides that:

It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

27. Agent is defined in §61-1-13(2)(a) of the Act to include:

Any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

28. Fileccia, Brown, Burke, Price and Thomas acted as agents of Omni without the proper licenses in violation of §61-1-3(1) of the Act.

Count III
(Employing Unlicensed Agents under §61-1-3 of the Act)

29. Section 61-1-3(2)(a) of the Act states:

It is unlawful for any broker-dealer or issuer to employ or engage an agent unless the agent is licensed.

30. Since Fileccia, Brown, Burke, Price and Thomas are not licensed to sell securities, Omni, McGuane and Sullivan violated §61-1-3(2)(a) of the Act by employing unlicensed agents to sell Omni securities.

Count IV
(Selling Unregistered Securities under §61-1-7 of the Act)

31. Section 61-1-7 of the Act states:

It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter or the securities or transaction is exempted under Section 61-1-14, or the

security is a federal covered security for which a notice filing has been made pursuant to the provisions of Section 61-1-15.5.

32. The securities that Respondents are attempting to sell have not been registered with the Division, are not federal covered securities for which a notice filing has been made, and do not appear to qualify for any exemptions from registration found in §61-1-14 of the Act.
33. Respondents are therefore in violation of § 61-1-7 of the Act.

EMERGENCY ORDER

In light of the foregoing, and in order to prevent or avoid danger to the public welfare, it is hereby ORDERED in accordance with Utah Code Ann. § 63-46b-20 that:

1. Respondents, together with their employees, agents, affiliates, assignees, successors, and associated entities, shall immediately CEASE AND DESIST from offering or selling securities in or from this State in violation of the law, and from directly or indirectly aiding or assisting other individuals or entities from offering or selling investment interests in securities in this State in violation of the Utah Uniform Securities Act; and
2. Respondents, together with their employees, agents, affiliates, assignees, successors, and associated entities, shall immediately CEASE AND DESIST from any and all other or further violations of the Act.

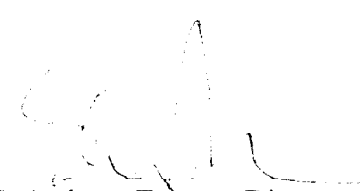
Respondents are advised that, pursuant to § 61-1-21(1) of the Act, any violation of this ORDER is punishable as a third-degree felony.

ORDER TO SHOW CAUSE

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur at the place, date and time set forth in the Notice of Agency Action. If Respondents fail to appear at the hearing, an order to cease and desist may be issued and a fine imposed by default against Respondents, as provided by Utah Code Ann. § 63-46b-11. At the hearing, Respondents may show cause, if any they have:


1. Why Respondents should not be found to have engaged in the conduct alleged by the Division.
2. Why Respondents should not be ordered to permanently cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1, 61-1-3, 61-1-7 or any other section of the Act;
3. Why Respondents should not be ordered to pay fines to the Division in amounts to be determined at the hearing.

DATED this 13th ^{November} day of October, 2002.



S. Anthony Taggart, Director
Utah Division of Securities

Approved:



Jeffrey Buckner
Assistant Attorney General